

E-filing

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODYName LIBBETT CARISHA C
(Last) (First) (Initial)Prisoner Number X10787Institutional Address VALLEY STATE PRISON FOR WOMEN C2/2/Hous
P.O. Box 92, CHOWCHILLA CA 93610-0092**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**CARISHA CAREE LIBBETT
(Enter the full name of plaintiff in this action.)

vs.

LINDA CONCKRAN, WARDEN (A)

(Enter the full name of respondent(s) or jailor in this action)

Case No. 07-2884
(To be provided by the clerk of court)**PETITION FOR A WRIT
OF HABEAS CORPUS****(PR)****Read Comments Carefully Before Filing In****When and Where to File**

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

- (a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

SANTA CLARA SUPERIORSAN JOSE

Court

Location

- (b) Case number, if known CC 467663
- (c) Date and terms of sentence 11/7/05 LIFE WITH THE POSSIBILITY OF PAROLE
- (d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes / No

Where?

Name of Institution: VAN DYKE STATE PRISON FOR WOMENAddress: P.O. Box 92, CHANDLER CA 93610
0092

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

KIDNAPING TO COMMIT ROBBERY / SUBDIVISION
SECTION: 209 (b) (1)

3. Did you have any of the following?

Arraignment: Yes ☒ No ☐
 Preliminary Hearing: Yes ☒ No ☐
 Motion to Suppress: Yes ☒ No ☐

4. How did you plead?

Guilty ☐ Not Guilty ☒ Nolo Contendere ☐

Any other plea (specify) _____

5. If you went to trial, what kind of trial did you have?

Jury ☒ Judge alone ☐ Judge alone on a transcript ☐

6. Did you testify at your trial? Yes ☐ No ☒

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes ☒ No ☐
 (b) Preliminary hearing Yes ☒ No ☐
 (c) Time of plea Yes ☒ No ☐
 (d) Trial Yes ☒ No ☐
 (e) Sentencing Yes ☒ No ☐
 (f) Appeal Yes ☒ No ☐
 (g) Other post-conviction proceeding Yes ☒ No ☐

8. Did you appeal your conviction? Yes ☒ No ☐

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes ☒ No ☐

Year: 05 Result: DENIED

Supreme Court of California Yes ☒ No ☐

Year: 07 Result: DENIED

Any other court Yes ☐ No ☒

Year: _____ Result: _____

(b) If you appealed, were the grounds the same as those that you are raising in this

petition?

Yes ☒ No ☐

(c) Was there an opinion?

Yes ☒ No ☐

(d) Did you seek permission to file a late appeal under Rule 31(a)?

Yes ☐ No ☒

If you did, give the name of the court and the result:

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes ☐ No ☒

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: _____

Type of Proceeding: _____

Grounds raised (Be brief but specific):

a. _____

b. _____

c. _____

d. _____

Result: _____ Date of Result: _____

II. Name of Court: _____

Type of Proceeding: _____

Grounds raised (Be brief but specific):

1 a. _____
 2 b. _____
 3 c. _____
 4 d. _____
 5 Result: _____ Date of Result: _____

6 III. Name of Court: _____
 7 Type of Proceeding: _____
 8 Grounds raised (Be brief but specific):
 9 a. _____
 10 b. _____
 11 c. _____
 12 d. _____
 13 Result: _____ Date of Result: _____

14 IV. Name of Court: _____
 15 Type of Proceeding: _____
 16 Grounds raised (Be brief but specific):
 17 a. _____
 18 b. _____
 19 c. _____
 20 d. _____
 21 Result: _____ Date of Result: _____

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes _____ No ☒ _____

24 Name and location of court: _____

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to
 27 support each claim. For example, what legal right or privilege were you denied? What happened?
 28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

need more space. Answer the same questions for each claim.

[Note: You must present ALL your claims in your first federal habeas petition. Subsequent petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant, 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

Claim One A VIOLATION OF THE 5TH AND AMENDS DO TO A
WRONGFUL CONVICTION OF KIDNAPPING FOR ROBBERY

Supporting Facts: WHERE INSUFFICIENT EVIDENCE SHOWS NO
PERIL TO THE MOVEMENT WENT "BEYOND THAT MERELY
INCIDENTIAL TO THE COMMISSION OF THE UNDERLYING
OFFENSE" AN ELEMENT REQUIRED BY SECTION 209-
(b) (5).

Claim Two: A VIOLATION OF FIFTH, SIXTH AND
FOURTEENTH AMENDMENTS.

Supporting Facts: THE STATE COUNTERPARTS, VIOLATED WHEN
TRIAL COURT UPHOLD MY CONVICTION OF KIDNAPPING FOR
ROBBERY WITH NO PERIL UNDER PC SECTION 209(b)
RELIVING ON THE GROUND THE MOVEMENT WAS INCIDENTAL
TO THE ALREADY COMMITTED BATHROOM ROBBERY

Claim Three: A VIOLATION OF FIFTH, SIXTH AND FOURTEENTH
AMENDMENTS.

Supporting Facts: BY RULING THAT APPELLANT LIBBEIT VIOLATED
SECTION 209(b) KIDNAPPING FOR ROBBERY BECAUSE HER
MOVEMENT OF THE VICTIM WAS INCIDENTAL TO THE
ALREADY COMMITTED FIRST ROBBERY AND NOT DETERMINING
WHETHER THE MOVEMENT WAS INCIDENTAL TO AN INTENDED
SECOND ROBBERY

If any of these grounds was not previously presented to any other court, state briefly which
grounds were not presented and why:

List, by name and citation only, any cases that you think are close factually to yours so that they are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning of these cases:

CALDERON V. COLEMAN (1998) 525 U.S. 141, DELGADO V. UNITED STATES (9th Cir. 1964) 327 F.2d 641, ESTELLE V. McGUIRE (1991) 502 U.S. 62, JACKSON V. VIRGINIA (1979) 443 U.S. 307, LANKFORD V. IDAHO (1991) 500 U.S. 110, SANDSTROM V. MONTANA

Do you have an attorney for this petition?

Yes _____ No /

If you do, give the name and address of your attorney:

WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

Executed on

May 22ND, 07

Date

Carl [Signature]

Signature of Petitioner

(Rev. 6/02)